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SIPDIS

STATE FOR USTR LMOLNAR, JCHOE-GROVES, FOR EEB/TPP/IPE JURBAN,
SWILSON and JBOGER; EUR/NCE MTURNER

COMMERCE FOR SAVICH and ITA/MAC/OIPR CPETERS

SENSITIVE

SIPDIS

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SUBJECT: SPECIAL 301 2008: BULGARIA MAINTAINS IPR MOMENTUM BUT
SIGNIFICANT WORK STILL AHEAD

Ref: A. 07 Sofia 1365 B. State 9475

¶1. (SBU) Summary: The year after being taken off the Special 301 list, the Government of Bulgaria continued to make impressive strides on IPR. The GOB's model intergovernmental working group continues to meet under new leadership and is taking steps to become even more inclusive. The Ministry of Culture increased its copyright inspections five-fold. With EU accession, Customs tightened border measures resulting in a 600 percent increase in seizures of pirated products. In response to the rise in internet piracy, the Cyber Crime Unit notched up its raids on torrent sites, Internet Service Providers and end users by 60 percent. Prosecutors show an increased willingness to take on IPR cases, although judges still have little experience dealing with IPR cases, and convictions still usually carry only administrative fines.

¶2. (SBU) Given the sustained GOB commitment to improving IPR -- shown clearly in the statistics above -- we agree with industry that Bulgaria should not be placed on the Special 301 Watch List. Embassy efforts, including outreach, training and advocacy, are focused on what we consider to be the weakest link in Bulgaria's IPR regime - the prosecutors and courts. When announcing the results of the 2008 Special 301 process, we recommend that our message commend progress made, while stressing the need to increase convictions, fines and jail time to show pirates the GOB has zero tolerance for IP crimes. End Summary.

INTERAGENCY COORDINATION

¶3. (SBU) Bulgaria's well-regarded intergovernmental IPR council continues to operate effectively under its new chair, Deputy Minister of Culture Yavor Milushev. Milushev, a former actor and Member of Parliament with experience in crafting IPR legislation, came to office in fall 2007, with a stated personal commitment to improve Bulgaria's IPR regime. While Milushev's direct personal style has some industry groups taking a "wait and see" attitude toward the changes he has proposed so far, they do not deny that the council continues to take effective action under his direction.

¶4. (SBU) Milushev has included Embassy representatives as non-voting members on the IPR council. He has created a new working group (scheduled to meet for the first time in February 2008) designed to give industry representatives more of a say in the country's IPR plan. Milushev has also increased five-fold his Ministry's copyright inspections in retail establishments and computer halls and has expanded these inspections to include restaurants, hotels and entertainment facilities. The intergovernmental IPR council's action plan for 2008 includes outreach to journalists and Bulgarian youth; improving communication with Internet Service Providers (ISPs); and enforcing fee payment

for use of copyrighted art, especially by cable tv operators. Milushev told us February 19 that improving relations with industry representatives will be a key priority for the IPR council in 2008.

INTERNET PIRACY

15. (SBU) Despite concerted efforts to combat it, internet piracy in Bulgaria continues to grow. Local industry estimates that almost all downloaded music in Bulgaria is illegal, while 80-90 percent of downloaded movies are pirated. The police Cyber Crime Unit launched a total of 80 operations against large torrent sites, ISPs, and end users in 2007, up from 50 operations in 2006 - a 60 percent increase. On February 13, 2008, the Cyber Crime Unit, along with special police forces, conducted their biggest raid ever in the northeast town of Dobrich. They seized 12 ftp servers equal to 25 terabytes of illegal content from the local ISP "Bergon-Internet." The police continue to investigate the case under the supervision of the Dobrich prosecutor's office.

16. (SBU) While the Cyber Crime Unit wins kudos from industry and post for its dedication, we are all watching closely the progress of the Dobrich case along with the results of a highly-publicized March 2007 raid in which the Cyber Crime Unit shut down four major torrent sites -- Arenabg.com, zamunda.net, Data.bg, and bol.bg -- to judge whether the prosecution side of Bulgaria's IPR regime is improving. Arenabg.com, which temporarily moved to Texas, is in operation again in Bulgaria, but with less stored volume. The prosecution is drafting an indictment and plans to file it in court in early March.

Zamunda.net moved its server outside Sofia, and the Cyber Crime Unit is actively trying to determine whether it is operating from Bulgaria. No indictment has been filed. Data.bg shut down its torrent tracker and turned itself into a legal "free server" called 4storing.com. The Cyber Crime Unit continues to monitor it for illegal activity. No indictment has been filed. Bol.bg shut down

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its torrent site, and the pre-court investigation against the group has been dropped, for as-yet unexplained reasons.

OPTICAL MEDIA PIRACY

17. (SBU) Street-level piracy has been reduced visibly in Sofia, partly due to sound enforcement and partly due to the rise in internet piracy. Street sales of pirated optical disks take place notably in the summer and winter resort areas. Home burning of copyrighted materials on compact discs (CDs) and DVDRs is widespread, according to industry. Local recording industry representatives estimate optical disc (OD) piracy between 40-45 percent, compared to 75 percent in 2006. The drop is attributed to improved legislation, increased inspections and the rise in internet piracy. Illegal movie content in 2007 was estimated at 60 percent in 2007 (no change from 2006.)

18. (SBU) Local IFPI representatives tell us that three of nine operating CD/DVD production facilities continue to refuse industry representatives voluntary access to their plants. According to current legislation, industry representatives are not allowed to accompany Ministry of Economy (MOEE) officials on their inspections of these plants. Our MOEE interlocutors continue to inspect these plants regularly and have reported no illegal production.

BORDER MEASURES IMPROVE

19. (SBU) Bulgarian Customs reported significant progress in the seizure of counterfeit goods in 2007. Last year Customs reported 1823 seizures totaling 6,776,976 pirated items - a 600 percent increase over the 263 seizures totaling 173,326 pirated goods in 2006. Customs' enhanced performance is attributed to tightened border controls demanded by EU membership, increased inspections of transit goods, and improved cooperation with industry, notably pharmaceutical companies.

PROGRESS ON DRUG/PATENT PROTECTIONS

110. (SBU) In April 2007, a new drugs law was enacted which eliminated the direct relationship between data exclusivity and the term of patent protection, allowing pharmaceutical companies to take advantage of their full patent terms. This law also extended the term of patent protection on pharmaceuticals to eight years from the patent date plus two years for market exclusivity and an additional one year for "significant, new use" drugs. Post is unaware of any pending IPR-related U.S. pharmaceutical cases in Bulgaria.

BUSINESS SOFTWARE

111. (SBU) Data on the use of pirated software was not available for 2007. In 2006 the Business Software Alliance reported illegal business software use was at 69 percent, down from 71 percent in 2005. The Government of Bulgaria is taking the use of business software seriously. In December 2007 it announced Microsoft had won a tender worth 84.9 Bulgarian leva (USD 60 million) for government-use software. With this tender, the GOB is now buying business software rather than paying subscription fees for its use.

PROSECUTORS MAKE PARTIAL PROGRESS

112. (SBU) Our industry and local contacts tell us cooperation between police, investigators, and prosecutors continues to improve and the prosecutor's office demonstrates an increased willingness to take IPR offenses seriously. In the first nine months of 2007, prosecutors formed 254 pre-trial, IPR-related proceedings, compared to 158 in the first nine months of 2006. Problems remain. Prosecutors still often lack familiarity with IPR cases and as a result at times are unable to see these pre-trial cases through the court phase. Many cases languish in the pre-trial process, only to be dropped at a later date.

113. (SBU) Prosecutors are developing their IPR expertise. The Bulgarian Association of Prosecutors, in cooperation with the U.S. Department of Justice, organized training sessions on IPR crime prosecution in January and April 2007 in three appellate regions, training 47 prosecutors. The training module was approved by the National Institute of Justice and is incorporated in this institute's training program. The program boasts a broad trainer base including representatives of the private sector. As a direct result, the lecturers developed a manual which was approved by the Prosecutor General as the official prosecutorial guidebook on IPR

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cases. The publication of the guidebook was developed with U.S. Department of Justice expert and financial support.

THE COURTS - BULGARIA'S ACHILLES' HEEL

114. (SBU) The courts remain the weakest link in Bulgaria's IPR regime. According to the Supreme Cassation Prosecutor, in the first nine months of 2007, only 71 IPR cases ended up in court. As a result of these cases, 62 people were sanctioned. Convictions usually carry only administrative fines. No one was sent to prison. Under Bulgarian law repeat offenders receive higher sentences, but to date not even repeat offenders have received jail time. As noted above, we continue to watch the criminal proceedings initiated against the owners of the four major Internet torrent sites raided in 2007, as well as the 2008 Dobrich case, but none of these cases have yet reached the courts.

EMBASSY EFFORTS

115. (SBU) The Embassy continued to stress IPR in its 2007 workplan. Outreach efforts by the Commercial Service, and the Departments of State, Agriculture and Justice extended across government ranks from the working level to the Prime Minister. In 2007 the Embassy sent nine GOB officials to USPTO training in

Washington, compared with five in 2006. In 2007, we sent a proactive supreme cassation prosecutor on an IPR-focused International Visitor Program. In October 2007 the U. S. Department of Justice initiated a joint training program on Cyber Crime between the National Institute of Justice and the Police Academy. The program also covered IPR crimes over the internet. In November 2007, the U.S. Department of Justice Intellectual Property Law Enforcement Coordinator for Eastern Europe took up residence at Embassy Sofia. In December, he provided training to judges from Bulgaria, Macedonia, Serbia and Romania on investigating, prosecuting, and adjudicating online piracy cases at a conference held in Plovdiv, Bulgaria.

COMMENT

¶116. (SBU) Bulgaria's impressive IPR performance over the past year allays our earlier concerns that being removed from the Watch List in 2006 would slow or reverse the progress that had been achieved over the past several years. Clearly, the GOB has institutionalized its seriousness on IPR. Still, much work lies ahead, especially on the enforcement side. In our future communications with the GOB on IPR, we should commend progress made, but also stress the need to continue to work closely and collaboratively with industry; keep highly-motivated elements of Bulgaria's IPR team well-funded, and, especially, to take the steps needed to improve the record of IPR cases in court.

BEYRLE